

1 DANIEL J. BERMAN, ESQ.
BERMAN O'CONNOR & MANN
2 Suite 503, Bank of Guam Building
111 Chalan Santo Papa
3 Hagåtña, Guam 96910
4 Telephone: (671) 477-2778
Facsimile: (671) 477-4366

Attorneys for Plaintiffs

**IN THE DISTRICT OF GUAM
TERRITORY OF GUAM**

EUSEBIO V. JACOB and MARTA A.
JACOB,

CIVIL CASE NO. _____

Plaintiffs,
v.

**COMPLAINT FOR PERSONAL
INJURY; EXHIBIT A; and,
DEMAND FOR JURY TRIAL**

1) PLASTICS ENGINEERING COMPANY
(PLENCO), a Wisconsin corporation;

2) ROCKWELL AUTOMATION, INC.,
individually and as successor by merger to
ALLEN-BRADLEY COMPANY, LLC and
as successor-in-interest to ROSTONE
CORPORATION, a Delaware corporation,

Defendants.

COME NOW the Plaintiffs, EUSEBIO V. JACOB and MARTA A. JACOB, and hereby for their Complaint against the Defendants allege as follows:

PARTIES

1. Plaintiffs above named are husband and wife respectively. Plaintiff EUSEBIO V. JACOB is hereinafter referred to as "Plaintiff first named"; Plaintiff MARTA A. JACOB is the spouse of Plaintiff EUSEBIO V. JACOB and is hereinafter referred to as "Plaintiff second named". Plaintiffs are residents of Tamuning, Guam.

2. Defendant (1) PLASTICS ENGINEERING COMPANY (PLENCO), a Wisconsin corporation, (hereinafter also "PLENCO"); and Defendant (2) ROCKWELL AUTOMATION, INC., individually and as successor-in-interest by merger to ALLEN-

1 BRADLEY COMPANY, LLC and as successor-in-interest to ROSTONE
2 CORPORATION, a Delaware corporation, (hereinafter collectively also "ROCKWELL")
3 were doing business in the Territory of Guam at all times mentioned herein.

4 **JURISDICTION, VENUE AND**
5 **FACTS COMMON TO ALL COUNTS**

6 3. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332
7 diversity of citizenship. The matter in controversy exceeds \$75,000 and this is a
8 controversy between Plaintiffs who are residents of Guam and Defendants who are
9 incorporated in states other than Guam, and who do not have their principal place of
10 business in Guam. Also, this court has jurisdiction pursuant to 28 U.S.C. § 1333.

11 4. This court has venue pursuant to 28 U.S.C. § 1391(b)(2) in that all of
12 Eusebio Jacob's exposure to asbestos occurred within the Territory of Guam.

13 5. Defendants above named, manufactured, sold and/or supplied certain
14 generically similar asbestos products which were ultimately used by insulators and
15 others, and/or to which they came in contact, while working in their trades and
16 occupations in the Territory of Guam and other locations. Defendants above named
17 also manufactured, sold and/or supplied certain generically similar asbestos products
18 to Guam Navy Ship Repair Facility (SRF) and other shipyards and ships for use in the
19 general overhaul, building, refitting and maintenance of ships. Defendants sold and
20 supplied certain equipment to the United States Navy and Guam SFR and other
21 shipyards, which contained asbestos gaskets and/or packing and which were sold by
22 said defendants as after-market replacement parts and which required asbestos
23 insulation, or required other asbestos containing parts to function properly; and also
24 sold replacement component parts for their equipment, including asbestos gaskets and
25 packing which were identical to their commercial counterparts. This equipment
26 includes but is not limited to the following: PLENCO (asbestos containing thermoset
27 plastic molding materials); ROCKWELL (Allan Bradley controllers, circuit breakers,
28

switches and other electrical equipment with asbestos parts); ROCKWELL is also the successor to ROSTONE which sold asbestos-containing thermoset plastic molding materials for use in electrical equipment.

6. Plaintiff first named was engaged in his employment as a journeyman electrician at the Navy Ship Repair Facility in Guam during the approximate years 1962 to 1985 where asbestos products were being used; and worked in and on ships where the said asbestos products were being used; and was repeatedly exposed to great quantities of asbestos, asbestos dust and asbestos fibers; and on these and other occasions, Plaintiff first named worked onboard the following ships which had first been overhauled and/or repaired at Guam SRF and defendants sold original equipment manufacturer (OEM) asbestos gaskets and packing to Guam SRF, which were installed in their respective equipment on the following ships listed on Exhibit A hereto including: USS Asheville, USS Banner, USS Brister (DER-327), USS Engage (MSO-433), USS Fortify (MSO-446), USS Grasp (ARS-24), USS Haverfield (DER-393), USS Impervious (MSO-449), USS Inflict (MSO-456) and USS Ponchatoula (AO-148). EUSEBIO V. JACOB inhaled asbestos dust and fibers from said asbestos products; and said exposures and inhalation directly and proximately caused Plaintiff first named to develop malignant mesothelioma and other asbestos-related diseases and injuries to his lungs, chest cavity, cardiovascular system and other parts of his body, which were not discovered and/or were disguised until about August 2018. Eusebio Jacob's diagnosis of mesothelioma was confirmed after a review of surgical pathology by the Hawaii Pathologists' Laboratory in Honolulu, Hawaii, report dated August 2, 2018.

COUNT I

STRICT LIABILITY

7. Plaintiffs incorporate herein by reference all prior allegations as if specifically restated herein, paragraph for paragraph and word for word.

1 8. At all times and places mentioned herein, Defendants, and each of them,
2 were engaged in the business of designing, manufacturing, assembling, maintaining for
3 sale, testing, inspecting, marketing, distributing, recommending and selling, leasing,
4 renting and supplying asbestos products.

5 9. Hereinabove described asbestos products were in substantially the same
6 condition as at the time of design, manufacture, assembly, testing, inspection,
7 marketing, distribution and sale.

8 10. At all times and places mentioned herein, said asbestos products failed to
9 meet consumer expectations of safety, and were unreasonably dangerous and in a
10 defective condition as to design and marketing, and Defendants, failed to warn or give
11 adequate warning calculated to reach the ultimate users or consumers of the dangers of
12 asbestos products, all of which directly and proximately resulted in the injuries and
13 damages sustained by Plaintiffs. The only claims against Defendants are for strict
14 liability failure to warn of the dangers of asbestos in association with their products.

15 11. By reason of the premises, Defendants, and each of them, are strictly liable
16 to Plaintiffs.

17 12. At all times and places mentioned herein, Defendants, and each of them,
18 at the time of design, manufacture, and sale of said asbestos products expressly and
19 impliedly warranted that said asbestos products as hereinabove described were of
20 merchantable quality, properly designed, manufactured and reasonably fit and suitable
21 for ordinary use in the ship construction, ship overhaul and ship refitting industries.

22 13. At all times and places mentioned herein, Defendants, and each of them,
23 breached said warranty, in that, among other things, said asbestos products were not of
24 merchantable quality nor properly designed nor manufactured nor fit for ordinary use
25 in the industry; that said asbestos products were designed, manufactured, fabricated,
26 assembled, supplied, marketed, sold and distributed in such a dangerous and defective
27 condition that said asbestos products were reasonably likely to, and did, cause injury by

reason of Defendants' design and manufacture and failure to warn; and further said asbestos products could not safely be used by a person exercising ordinary and reasonable care.

14. As a direct and proximate result of these breaches of expressed and implied warranties, Plaintiffs suffered injury, disease, and damage as is herein set forth.

15. As a direct and proximate result of the Defendants manufacturing asbestos materials and placing them in the stream of interstate commerce, Plaintiffs have been injured as described herein.

16. Plaintiffs, through no fault of their own, may not be able to identify any or all asbestos products which caused the injuries stated herein.

17. Each Defendant manufacturer is liable for Plaintiffs' injuries in proportion to that Defendant manufacturer's share of the asbestos materials market.

COUNT II

NEGLIGENCE CLAIM AGAINST DEFENDANTS

18. Plaintiffs incorporate herein by reference all prior allegations as if specifically restated herein, paragraph for paragraph and word for word.

19. The said injuries to Plaintiffs were caused by the negligence of Defendants, and each of them.

20. At all times and places mentioned herein, Defendants and each of them, negligently designed, manufactured, selected materials, assembled, inspected, tested, maintained for sale, marketed, distributed, leased, sold, recommended and delivered the hereinabove described certain asbestos products in such manner so as to cause said asbestos products to be in a defective and unsafe condition, and unfit for use in the way and manner such products are customarily treated, used and employed; and, that said Defendants, and each of them, negligently failed to discover said defects and/or failed to warn and/or adequately test and give adequate warning of known or knowable

dangers of asbestos products to users of said products of said defects and dangers and/or failed to find or use a safe substitute insulating material.

21. At all times and places mentioned herein, Defendants, and each of them, carelessly and negligently permitted dangerous and defective asbestos products to exist at the hereinabove described locations; and furthermore, Defendants, and each of them, negligently failed to provide Plaintiff first named a safe place of employment by reason of their acts, omissions and conduct. The only claims against Defendants is for negligent failure to warn of the dangers of asbestos.

22. As a result of the above, Plaintiff first named contracted malignant mesothelioma and other asbestos-related diseases and injuries to his lungs, chest cavity, cardiovascular system, and other bodily injuries, including shock, great pain of mind and body, fear of cancer and fear of death, and has been permanently injured.

23. As a further result of the above, Plaintiffs have incurred medical bills and miscellaneous expenses, and asks leave to amend this Complaint to show the total thereof at the trial.

24. As a further result of the above, Plaintiffs sustained wage losses, to be shown at the time of trial.

25. Plaintiff EUSEBIO V. JACOB and others in his position worked in close proximity to the asbestos-containing products of Defendants, and the presence of Plaintiff EUSEBIO V. JACOB, as well as others in his position, was known, or, in the exercise of reasonable care, should have been anticipated by the Defendants, and each of them.

COUNT III

PUNITIVE DAMAGES

26. Plaintiffs incorporate herein by reference all prior allegations as if specifically restated herein, paragraph for paragraph and word for word.

1 27. The Defendants and each of them, have been possessed since 1929 of
2 medical and scientific data which clearly indicates that the products, asbestos and
3 asbestos related insulation products, were hazardous to the health and safety of
4 Plaintiff first named and others in his position, and prompted by pecuniary motives, the
5 Defendants, and each of them, individually and collectively, ignored and failed to act
6 upon said medical and scientific data and conspired to deprive the public, and
7 particularly the users, of said medical and scientific data, depriving them, therefore, of
8 the opportunity of free choice as to whether or not to expose themselves to the asbestos
9 products of said Defendants. As a result, the Plaintiffs have been severely damaged as
10 is set forth below.

11 28. At all times and places mentioned herein, Defendants, and each of them,
12 so negligently designed, manufactured, selected materials, assembled, inspected, tested,
13 maintained for sale, marketed, distributed, leased, sold, rented, recommended and
14 delivered the hereinabove described certain asbestos products so as to cause said
15 asbestos products to be in a defective and unsafe condition, and unfit for use in the way
16 and manner such equipment is customarily treated, used, and employed in a manner as
17 to amount to reckless and wanton disregard for the safety, health, welfare, and feelings
18 of Plaintiffs, and for that reason, Plaintiffs claim punitive damages against each
19 Defendant, in the amount shown at trial.

COUNT IV

LOSS OF CONSORTIUM CLAIM AGAINST ALL DEFENDANTS

22 29. Plaintiffs incorporate herein by reference all prior allegations as if
23 specifically restated herein, paragraph for paragraph and word for word.

24 30. By reason of the injuries to Plaintiff first named, EUSEBIO V. JACOB,
25 Plaintiff second named, MARTA A. JACOB, suffered loss of affection, society, company,
26 support, consortium, companionship, comfort and protection and suffered serious
27 emotional distress.

1 These injuries and damages are continuing and permanent in nature in the past,
2 present and future.

3 WHEREFORE, plaintiffs herein demand judgment jointly and severally against
4 the defendants in an amount which is just and reasonable in light of the facts, law and
5 evidence, inclusive of compensatory damages, punitive damages, plus pre and post-
6 judgment interest and costs as alleged herein, and for other such relief as the Court
7 deems just and appropriate.

8 **JURY DEMAND**

9 Plaintiffs demand a trial by jury of all issues so triable as of right.

10 Respectfully submitted this 20 day of JUNE, 2019.

11 **BERMAN O'CONNOR & MANN**
12 Attorneys for Plaintiffs
13 EUSEBIO V. JACOB and MARTA A. JACOB

14 By:


DANIEL J. BERMAN

EXHIBIT “A”

Jacob, Eusebio

Guam Naval Repair Facility Deck Log Rule 1006 Summary

TAB	Ship Name	Hull #	Arrival/ Departure Dates	Notes
1	USS Asheville	PG-84	7/10/1970 - 11/20/1970	drydocked 9/11 - 9/16
	USS Asheville	PG-84	5/31/1972 - 10/2/1972	drydocked 6/22 - 7/21, 8/9 - 8/10, 8/30 - 9/3
	USS Asheville	PG-84	3/8/1974 - 6/20/1974	drydocked 3/20 - 4/17; at Station from 6/1
2	USS Banner	AKL-25 / AGER-1	8/31/1963 - 9/20/1963	
	USS Banner	AKL-25 / AGER-1	10/1/1963 - 12/23/1963	drydocked 10/16 - 11/23
	USS Banner	AKL-25 / AGER-1	10/20/1965 - 12/20/1965	(at Yokosuka & area for most of duration; arrives at Guam NSD on 12/31/1965)
3	USS Brister	DER-327	1/10/1963 - 6/10/1963	moved to SRF from Station 1/10; on local ops 4/28- 4/30
4	USS Bulloch County	LST-509	9/29/1968 - 1/17/1969	at Guam Naval Station, Apra Harbor (not listed as SRF); drydocked 10/29 - 11/22
5	USS Caddo Parish	LST-515	12/5/1967 - 2/10/1968	drydocked 12/15 - 12/28/1967 (arrives at SRF from Guam Supply Depot)
6	USS Canon	PG-90	9/9/1970 - 4/14/1971	drydocked 11/17/1970 - 1/13/1971
	USS Canon	PG-90	9/12/1972 - 3/6/1973	drydocked 9/27/1972 - 10/20/1972, 2/13/1973 - 2/23/1973
7	USS Crockett	PG-88	3/7/1970 - 7/19/1970	drydocked 4/27 - 5/14
	USS Crockett	PG-88	1/10/1972 - 4/21/1972	drydocked 2/2 - 3/9
	USS Crockett	PG-88	11/3/1973 - 4/4/1974	drydocked 12/6 - 1/3, 1/29 - 3/7
8	USS Cohues	ANL-78	4/29/1972 - 6/30/1972	no logs after 6/30/1972, ship DECOMMISSIONED; ship at Guam Naval Station (not listed as SRF)

9	USS Engage	MSO-433	7/24/1972 - 10/21/1972	drydocked 8/2 - 9/14
10	USS Finch	DER-328	6/27/1966 - 8/29/1966	
	USS Finch	DER-328	5/29/1967 - 7/8/1967	at Guam Naval Supply Depot (not listed as SRF); local ops 6/16 - 6/17, 6/26 - 6/29
	USS Finch	DER-328	1/8/1968 - 3/12/1968	moved to SRF from Supply Depot 1/8
11	USS Fortify	MSO-446	6/6/1973 - 9/27/1973	drydocked 6/26 - 7/27 (inconsistent Base / SRF terminology)
12	USS Gallup	PG-85	11/18/1970 - 4/14/1971	drydocked 12/14/1970 - 1/14/1971; yard overhaul noted complete on 3/14/1971
	USS Gallup	PG-85	9/5/1972 - 1/8/1973	drydocked 9/7 - 10/13
	USS Gallup	PG-85	4/16/1974 - 5/15/1974	
13	USS Garrett County	LST-786	12/14/1968 - 2/15/1969	drydocked 12/21/1968 - 1/6/1969
14	USS Grasp	ARS-24	9/7/1966 - 2/1/1967	drydocked 10/25 - 11/21
	USS Grasp	ARS-24	1/30/1970 - 6/2/1970	drydocked 3/2 - 3/31 (1/29 entry notes that ship is going to SRF for regular overhaul)
	USS Grasp	ARS-24	8/3/1973 - 1/31/1974	drydocked 10/26 - 11/29
15	USS Hampshire County	LST-819	8/5/1968 - 11/26/1968	drydocked 9/20 - 10/11 (most pages do not refer to SRF and only name "Apra Harbor, Guam")
16	USS Haverfield	DER-393	1/31/1962 - 5/3/1962	drydocked 2/16 - 4/4
17	USS Hickman County	LST-825	9/2/1968 - 11/23/1968	at Guam Naval Station (not listed as SRF); drydocked 9/13 - 10/16
18	USS Impervious	MSO-449	10/23/1972 - 1/1/1973	drydocked 11/1 - 11/21
19	USS Inflict	MSO-456	1/10/1973 - 3/6/1973	drydocked 1/16 - 2/14; moves to Degaussing Range on 3/6

20	USS Iredell County	LST-839	6/27/1968 - 10/12/1968	at Guam Naval Station, Apra Harbor (not listed as SRF); drydocked 8/23 - 9/13
21	USS Koiner	DER-331	10/17/1966 - 1/9/1967	at Guam Naval Station, Apra Harbor (not listed as SRF; arrives from Supply Depot); local ops 12/20 - 12/21
	USS Koiner	DER-331	7/24/1967 - 9/12/1967	
22	USS Ketchmer	DER-329	10/3/1966 - 1/9/1967	at Apra Harbor, Guam (not listed as SRF)
	USS Ketchmer	DER-329	10/13/1967 - 1/22/1968	at Guam Naval Station, Apra Harbor (not listed as SRF)
23	USS Litchfield County	LST-901	8/16/1969 - 12/6/1969	at Guam Naval Station (not listed as SRF); drydocked 10/2 - 10/13; decommissioned 12/6/1969
24	USS Lowe	DER-325	6/4/1966 - 8/29/1966	at Guam Naval Station (not listed as SRF)
	USS Lowe	DER-325	4/24/1967 - 6/27/1967	at Guam Naval Station (not listed as SRF)
	USS Lowe	DER-325	4/3/1968 - 7/8/1968	drydocked 4/15 - 5/9 (inconsistent Station / SRF terminology) (in Taiwan area Jan - early April)
25	USS Luzerne County	LST-902	5/29/1968 - 8/6/1968	drydocked 6/26 - 7/20
26	USS Madera County	LST-905	3/2/1968 - 5/6/1968	drydocked 3/14 - 4/15 (arrives at SRF from Wharf D, Guam; 3/2 page notes ship is at SRF for overhaul)
27	USS Marathon	PG-89	9/14/1971 - 12/13/1971	drydocked 10/8 - 10/28
	USS Marathon	PG-89	6/6/1973 - 9/21/1973	drydocked 6/14 - 7/3
28	USS Meeker County	LST-980	5/15/1969 - 9/2/1969	drydocked 6/7 - 7/3 (inconsistent Station / SRF terminology)
29	USS Monmouth County	LST-1032	8/28/1967 - 11/19/1967	drydocked 9/16 - 9/28 (most pages do not refer to SRF and only name "Apra Harbor, Guam")

30	USS Park County	LST-1077	12/22/1968 - 4/12/1969	at Guam Naval Station (not listed as SRF); drydocked 1/8 - 2/1
31	USS Pitkin County	LST-1082	2/9/1969 - 6/8/1969	at Guam Naval Station (not listed as SRF); drydocked 2/26 - 3/15
32	USS Ponchatoula	AO-148	1/19/1974 - 7/6/1974	drydocked 2/4 - 4/6
33	USS Proteus	AS-19	1/30/1968 - 5/19/1968	drydocked 2/8 - 3/2
34	USS San Joaquin County	LST-1122	4/24/1963 - 7/5/1963	drydocked 5/20 - 6/11 (most pages do not refer to SRF and only name "Apra Harbor, Guam")
35	USS Sedgwick County	LST-1123	8/14/1969 - 12/6/1969	at Apra Harbor, Guam (not referred to as SRF); drydocked 10/13 - 10/29; ship decommissioned 12/6
36	USS Sutter County	LST-1150	6/25/1969 - 10/12/1969	drydocked 7/26 - 8/18
37	USS Tacoma	PG-92	2/20/1971 - 7/9/1971	drydocked 3/11 - 3/30
	USS Tacoma	PG-92	4/12/1973 - 6/25/1973	drydocked 4/20 - 5/17
38	USS Tom Green County	LST-1159	4/23/1964 - 7/18/1964	drydocked 5/6 - 5/27
39	USS Wandank	ATA-204	4/14/1964 - 7/10/1964	drydocked 4/28 - 5/22 (pages note yard overhaul)
	USS Wandank	ATA-204	1/6/1967 - 7/22/1967	7/22/1967; drydocked 3/28 - 5/17
	USS Wandank	ATA-204	8/25/1969 - 11/24/1969	drydocked 9/9 - 9/26
40	USS Welch	PG-93	2/20/1971 - 7/24/1971	drydocked 3/17 - 4/6; local ops 7/8 - 7/12
	USS Welch	PG-93	3/9/1973 - 5/31/1973	drydocked 3/16 - 4/6

NSD = Naval Supply Depot

SRF = Ship Repair Facility